

# **DECLARATION OF EMERGENCY**

## **Office of the Governor Board of Pardons**

General Administration and Clemency  
(LAC 22:V.101-123 and 201-213)

The Board of Pardons is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend its rules of LAC 22:V.101-123 and promulgate rules of LAC 22:V.201-213 of the Louisiana Board of Pardons. This rulemaking implements Act 714 of the 2012 Regular Session of the Louisiana Legislature with respect to training requirements of members of the Board of Pardons. In addition this rulemaking establishes rules with respect to types of clemency, eligibility criteria, clemency applications for capital cases, and records management.

The Emergency Rule is necessary to implement the changes to the Louisiana Board of Pardon's Rules to detail the procedure that an offender who has been sentenced to death may apply to the Louisiana Board of Pardons for a recommendation to the Governor for a reprieve or stay of execution. Heretofore no rules were promulgated for use by the board of pardons on capital cases. On December 12, 2012, a district court judge lifted a stay of execution for a Louisiana Death Row inmate and set an execution date for February 13, 2013. In LAC 22:V.213, the rules provide for the pardon board application process of a condemned inmate, but further provide that the application must be delivered to the board office not later than the twenty-first calendar day before the scheduled execution. A delay in promulgation of the rules would have an adverse impact on the affected offender.

The rules further provide specific eligibility criteria for an incarcerated offender to apply for clemency. To be eligible to apply for clemency, an incarcerated offender must have been incarcerated for a period of 10 years; must be disciplinary report free for a period of 24 months prior to the submission of the application; must possess a marketable job skill through job experience or vocational training; and cannot be in lockdown status at the time of application or at the time of the Pardon Board hearing should such hearing be granted; or that the application must be accompanied by written recommendation of the trial official(s) with a statement that the penalty now appears excessive, along with a recommendation of a definite term now considered by the official to be just and proper. A delay in promulgation of the rules would have an adverse impact on the affected offenders.

The Board of Pardons has determined that the adoption of an Emergency Rule is necessary and hereby provides notice of its declaration of emergency effective on December 21, 2012 in accordance with R.S. 49:953. This Emergency Rule shall be in effect for 120 days or until adoption of the final Rule, whichever occurs first.

### **Title 22**

## **CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**

### **Part V. Board of Pardons**

#### **Chapter 1. Administration**

##### **§101. Mission Statement**

A. The mission of the Louisiana Board of Pardons is to perform its duties as imposed by Article I, Sections 10 and

20, and Article IV, Section 5, of the Louisiana Constitution and recommend the resolution of clemency matters to the Governor.

B. The mission of the Committee on Parole is to determine the time and conditions of release for eligible offenders in a manner that ensures public safety and facilitates an offender's reintegration into society, recognizing that the parole process is an essential element of the criminal justice system.

C. Using evidence based research, the parole decision makers (Committee members) shall:

1. render just determination in regard to parole release and revocations, thereby maximizing the restoration of human potential while restraining the growth of the Louisiana prison population;

2. impose reasonable and prudent conditions of release consistent with the goal of structured reintegration of an offender's release into the community; and

3. impose realistic and relevant conditions of release tailored to the specific offender.

D. The board seeks to promote successful offender reentry by maintaining contact during supervision to not only intervene and address violation behavior, but to acknowledge and support compliance and accomplishments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.1 and 15:572.4.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:

##### **§103. Filing Procedure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 24:1132 (June 1998), repealed by Office of the Governor, Board of Pardons, LR 39:

##### **§105. Discretionary Powers of the Board**

A.1. The Board of Pardons, at its discretion, may deny any applicant a hearing for any of the following reasons:

- a. serious nature of the offense;
- b. insufficient time served on sentence;
- c. insufficient time after release;
- d. proximity of parole/good time date;
- e. institutional disciplinary reports;
- f. probation/parole—unsatisfactory/violated;
- g. past criminal record; or
- h. any other factor determined by the board.

2. However, nothing in Chapter 1 shall prevent the board from hearing any case.

B. In any matters not specifically covered by LAC 22:V.Chapter 1, the board shall have discretionary powers to act.

C. No person shall have a right of appeal from a decision of the board of pardons or the Governor regarding clemency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 24:1133 (June 1998), LR 28:1026 (May 2002), amended by Office of the Governor, Board of Pardons, LR 39:

##### **§107. Contact with the Board of Pardons**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 24:1133 (June 1998), repealed by the Office of the Governor, Board of Pardons, LR 39:

#### **§109. Hearing Granted**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 24:1133 (June 1998), amended LR 26:88 (January 2000), repealed by Office of the Governor, Board of Pardons, LR 39:

#### **§111. Notice of Public Hearing Dates**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4 and 15:574.12(G) and R.S. 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Correction, Board of Pardons, LR 16:1063 (December 1990), amended LR 24:1133 (June 1998), repealed by Office of the Governor, Board of Pardons, LR 39:

#### **§113. Denials by Board after Public Hearing**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 24:1134 (June 1998) repealed by the Office of the Governor, Board of Pardons, LR 39:

#### **§115. Denial/No Action Taken by Governor after Favorable Recommendation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 24:1134 (June 1998), repealed by Office of the Governor, Board of Pardons, LR 39:

#### **§117. Governor Grants**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 24:1134; repealed by Office of the Governor, Board of Pardons, LR 39:

#### **§119. Training**

A. Within 90 days of being appointed to the board, each member shall complete a comprehensive training course developed by the Department of Public Safety and Corrections. Each member shall complete a minimum of eight hours of training annually.

B. Each board member shall be issued a *Rules and Procedures Manual* and shall sign a statement to acknowledge receipt of the manual. Such statement shall include the board member's agreement to completely and thoroughly familiarize himself or herself with the information contained therein and to conduct himself at all times in a manner which will strictly adhere to the letter of the law, as well as the spirit and intent. The manual shall contain, but not be limited to, a copy of the following:

1. Louisiana Board of Parole Rules and Procedures;
2. Code of Governmental Ethics;
3. R.S. 42:1 et seq. (Public Policy for Open Meetings Law);
4. all Department of Public Safety and Corrections regulations and/or statutes with particular reference to the operations of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:

#### **§121. Contact with the Board of Pardons**

A. Contact with the Board of Pardons or any member is prohibited except by appearing/testifying at a public hearing or by written letter addressed to the Board of Pardons.

B. If a board member is improperly contacted, he/she must immediately notify the individual in writing that the contact is illegal. The letter must be accompanied by a copy of R.S.15:573.1, and the contact must be reported to the other board members.

C. Any prohibited contact after an individual has been informed of the prohibition as provided in §121.B shall be fined not more than \$500 or imprisoned for not more than six months or both.

D. All letters in favor of pardon, clemency, or commutation of sentence are subject to public inspection. Exceptions to §121 are:

1. letters from any victim of a crime committed by the applicant being considered for pardon, clemency, or commutation of sentence, or any person writing on behalf of the victim;

2. any letters written in opposition to pardon, clemency, or commutation of sentence.

E. All letters written by elected or appointed public officials in favor of or opposition to pardon, clemency, or commutation of sentence received after August 15, 1997 are subject to public inspection and shall be recorded in a central register maintained by the board. The register shall contain the name of the individual whose pardon, clemency, or commutation of sentence is subject of the letter, the name of the public official who is the author of the letter and the date the letter was received by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:

#### **§123. Board Spokesperson**

A. Only the chairman of the board or, in the absence of the chairman, the vice-chairman shall be authorized to speak on behalf of the entire board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:

#### **§125. Records Management and Confidentiality of Information**

##### **A. Records Management and Retention**

1. The board shall implement a records management program to ensure all Board of Pardons vital records are stored managed, and disposed of in accordance with state law. The board shall use the Records Retention Schedule created and maintained by the Department of Public Safety and Corrections, Corrections Services.

##### **B. Confidentiality**

1. The presentence investigation report, the pre-parole report, the clemency investigation, the information and data gathered by staff of the board, the prison record, and any other information obtained by the board or the Department of Public Safety and Corrections, in the discharge of their official duties shall be confidential and shall not be subject to public inspection or be disclosed directly or indirectly to anyone except as provided by these rules and R.S.

15:574.12, and regulations of the Department of Public Safety and Corrections.

C. Release of Information—Sex Offenders

1. The board is authorized to release to the public the following information regarding sex offenders:

- a. name and address;
- b. crime of conviction and date of conviction;
- c. date of release on parole or diminution of sentence;
- d. most recent photograph available; and
- e. any other information that may be necessary and relevant for public protection.

2. Verbal requests for such information are acceptable.

3. The chairman of the board or his or her designee may require a written request before releasing any information.

4. The board cannot release any information regarding victims or witnesses of sex crimes to the sex offender or the general public.

D. Release of Information—Minor Victim(s)

1. In addition to any other information authorized to be released, the board may, pursuant to R.S. 15:546, release information concerning any inmate under the jurisdiction of the board who is convicted of any sex offense or criminal offense against a victim who is a minor, or who has been determined to be a sexually violent predator.

E. Release of Information—Criminal Convictions

1. The board may disseminate information regarding an offender's criminal convictions without restriction.

F. Other information regarding an offender's criminal history records, including nonconviction history may only be released subject to the restrictions outlined in R.S. 15:548. Unless the request is made by a representative of a criminal justice agency or a juvenile justice agency, such information shall, under normal circumstances, be released only pursuant to a written request.

G. The board shall be immune from liability for the release of information concerning any sex offender, sexually violent predator, or child predator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:

## **Chapter 2. Clemency**

### **§201. Types of Clemency**

A. Executive Pardon. An executive pardon is a full pardon which unconditionally releases a person from punishment and forgives guilt for any Louisiana convictions. It restores an applicant to all of the rights of citizenship possessed by the person before his or her conviction, including the right to own, possess, or use firearms.

B. Pardon without Firearm Authority. A pardon without firearm authority releases a person from punishment and forgives guilt. It entitles an applicant to all of the rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess, or use firearms.

C. Pardon for Misdemeanor. A pardon for a misdemeanor conviction releases a person from punishment and forgives guilt.

D. Commutation of Sentence. A commutation of sentence may adjust an applicant's penalty to one less severe but does not restore any civil rights, and it does not restore the authority to own, possess, or use firearms.

E. Specific Authority to Own, Possess, or Use Firearms. The specific authority to own, possess, or use firearms restores an applicant the right to own, possess, or use firearms, which were lost as a result of a felony conviction. Due to federal firearms laws, the pardon board will not consider requests for firearm authority from individuals convicted in federal or out-of-state courts.

F. First Offender Pardons. For the purposes of this section "first offender" means a person convicted within Louisiana of a felony but never previously convicted of a felony within Louisiana or convicted under the laws of any other state or of the United States or of any foreign government or country of a crime which, if committed in this state would have been a felony, regardless of any previous convictions for any misdemeanors. Once such a pardon is granted, the individual who received such pardon shall not be entitled to receive another such pardon. Types of first offender pardons are listed below.

1. Offenders Sentenced after November 5, 1968 and before December 31, 1974. An offender sentenced after November 5, 1968 and before December 31, 1974, who has never been previously convicted of a felony, and who has completed serving their sentence, is eligible to apply for a governor's first offender pardon. By Executive Order dated March 16, 2001, all of these types of applications for clemency must be submitted to the pardon board.

2. Offenders Sentenced on or after January 1, 1975 and before December 27, 1999 (automatic first offender pardon). A first offender sentenced on or after January 1, 1975 and who has never been previously convicted of a felony shall be automatically pardoned upon completion of his sentence without a recommendation of the pardon board and without action by the governor. The Division of Probation and Parole of the Department of Public Safety and Corrections has responsibility for the issuance of this type of first offender pardon certificate. The certificate proclaims that the offender has been restored all basic rights of citizenship, which includes the right to vote, but does not specifically restore the right to own, possess, or use firearms.

3. Offenders Sentenced after December 27, 1999 (Automatic First Offender Pardon). A first offender sentenced after December 26, 1999 for a non-violent crime, or convicted of aggravated battery, second degree battery, aggravated assault, mingling harmful substances, aggravated criminal damage to property, purse snatching, extortion, or illegal use of weapons or dangerous instrumentalities never previously convicted of a felony shall be pardoned automatically upon completion of his sentence without a recommendation of the board of pardons and without action by the governor. The Division of Probation and Parole of the Department of Public Safety and Corrections has responsibility for the issuance of this type of first offender pardon certificate. The certificate proclaims that the offender has been restored all basic rights of citizenship, which includes the right to vote, but does not specifically restore the right to own, possess, or use firearms.

4. No person convicted of a sex offense as defined in R.S. 15:541 or determined to be a sexually violent predator or a child predator under the provisions of R.S. 15:542.1 et seq. shall be exempt from the registration requirements of R.S. 15:542.1 et seq., as a result of a pardon under the provision of this subsection.

5. Any person sentenced on or after January 1, 1975 receiving a first offender pardon under these provisions may

be charged and punished as a second or multiple offender as provided in R.S. 15:529.1

6. No first offender pardon may be issued to a first offender unless that person has paid all of the court costs which were imposed in connection with the conviction of the crime for which the pardon is to be issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572, 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:

### **§203. Eligibility for Clemency Consideration**

#### **A. Eligibility**

1. Pardons. A person may not apply for a pardon if the applicant has any outstanding detainers, or any pecuniary penalties or liabilities which total more than \$1,000 and result from any criminal conviction or traffic infraction. In addition, no person is eligible to apply for pardon unless the applicant has paid all court costs which were imposed in connection with conviction of the crime for which pardon is requested.

2. Commutation of Sentence. A person may not be considered for a commutation of sentence unless he or she has been granted a hearing by the pardon board and has had his or her case placed upon a pardon board agenda.

3. Remission of Fines and Forfeitures. A person may not apply for a remission of fines and forfeitures unless he or she has completed all sentences imposed and all conditions of supervision have expired or been completed, including, but not limited to, parole and/or probation.

4. Specific Authority to Own, Possess, or Use Firearms. A person may not apply for the specific authority to own, possess, or use firearms unless he or she has completed all sentences imposed for the applicant's most recent felony conviction and all conditions of supervision imposed for the applicant's most recent felony conviction have expired or been completed, including, but not limited to, parole and/or probation, for a period of five years. The applicant may not have any outstanding detainers, or any pecuniary penalties or liabilities which total more than \$1,000 and result from any criminal conviction or traffic infraction. In addition, the applicant may not have had any outstanding victim restitution, including, but not limited to, restitution pursuant to a court or civil judgment or by order of the committee on parole.

B. Applications. All applications must be submitted in accordance with §205, Application Filing Procedures.

C. Incarcerated Applicants or Applicants under Supervision of the Louisiana Department of Public Safety and Corrections

1. An executive pardon shall not be considered for an offender while in prison, except when exceptional circumstances exist.

2. An incarcerated offender who is not serving a life sentence may request a commutation of sentence:

- a. after having served a minimum of 10 years; and
- b. must have been disciplinary report free for a period of at least twenty-four months prior to the date of the application; and
- c. must not be classified to a maximum custody status at the time of the application or at the time of the hearing (if a hearing is granted); and
- d. must possess a marketable job skill, either through previous employment history or through successful completion of vocational training while incarcerated; or

e. upon the written recommendation from trial official(s) that includes

1. a statement that the penalty now appears to be excessive;

2. a recommendation of a definite term now considered by the official as just and proper;

3. a statement of the reasons for the recommendation based upon facts directly related to the facts of the case and in existence, but not available to, the court or jury at the time of trial, or a statutory change in penalty for the crime which would appear to make the original penalty excessive.

D. Life Sentences. An offender sentenced to life may not apply until he has served 15 years from the date of sentence, unless he has sufficient evidence which would have caused him to have been found not guilty. The offender must also meet the criteria stated in Subparagraphs C.2.a-d of this Section

C. Capital Cases. Any offender sentenced to death may submit an application within one year from the date of the direct appeal denial. (See also §213, Capital Cases.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:

### **§205. Application Filing Procedure**

#### **A. All Applicants**

1. Every application must be submitted on the form approved by the Board of Pardons and must contain the following information:

- a. name of applicant;
- b. prison number [Department of Corrections (DOC) number];
- c. date of birth;
- d. race/sex;
- e. education (highest grade completed);
- f. age at time of offense;
- g. present age;
- h. offender class;
- i. place of incarceration (incarcerated applicant only);
- j. parish of conviction/judicial district/court docket number;
- k. offense(s) charged, convicted of or plead to;
- l. parish where offense(s) committed;
- m. date of sentence;
- n. length of sentence;
- o. time served;
- p. prior parole and/or probation;
- q. when and how parole or probation completed;
- r. prior clemency hearing/recommendation/approval;
- s. reason for requesting clemency;
- t. relief requested and narrative detailing the events surrounding the offense;
- u. institutional disciplinary reports (incarcerated applicants only); total disciplinary reports, number within the last 24 months; nature and date of last violation; and custody status.

2. The application shall be signed and dated by applicant and shall contain a prison or mailing address and home address.

3. An application must be completed. If any required information does not apply, the response should be "NA."

B. In addition to the information submitted by application, the following required documents must be attached as they apply to each applicant.

1. Incarcerated Applicants. Any applicant presently confined in any institution must attach a current master prison record and time computation/jail credit worksheet and have the signature of a classification officer verifying the conduct of the applicant as set out in §205.A.1.u and a copy of conduct report. Applicants sentenced to death must attach proof of direct appeal denial.

2. Parolees. Applicants presently under parole supervision or who have completed parole supervision must attach a copy of their master prison record or parole certificate.

3. Probationers. Applicants presently under probation supervision or who have completed the probationary period must attach a certified copy of sentencing minutes or copy of automatic first offender pardon.

4. First Offender Pardons [R.S. 15:572(B)]. Applicants who have received an automatic first offender pardon must attach a copy of the automatic first offender pardon.

C. No additional information or documents may be submitted until applicant has been notified that he/she will be given a hearing. The Board of Pardons will not be responsible for items submitted prior to notification that a hearing will be granted.

D. Reapplication upon Denial. Any applicant denied by the board shall be notified, in writing, of the reason(s) for the denial and thereafter may file a new application as indicated below:

1. Applicants Sentenced to Life Imprisonment. Any applicant with a life sentence may reapply seven years after the initial denial; five years after the subsequent denial; and every five years thereafter. Applicant must also meet the criteria stated in §203.C.2.a-d.

2. Other. Applicants without a life sentence may file a new application two years from date of the letter of denial.

3. Fraudulent Documents or Information. Any fraudulent documents or information submitted by an applicant will result in an automatic denial by the board and no new application will be accepted until four years have elapsed from the date of letter of denial.

4. Governor Granted Clemency. The Office of the Governor will notify an applicant if any clemency is granted. Any otherwise eligible person who has been granted any form of executive clemency by the governor may not reapply for further executive clemency for at least four years from the date that such action became final.

5. Denial/No Action Taken by Governor after Favorable Recommendation. The board shall notify an applicant after its receipt of notification from the governor that the board's favorable recommendation was denied or no action was taken. The applicant may submit a new application one year from the date of the letter or denial or notice of no action.

E. Notice of Action Taken on Application. After review of application for clemency by the board, applicants shall be notified, in writing, of action taken by the board. Action can include granting a hearing before the board or denial of a hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:

## **§209. Hearing Granted**

A. After notice to an applicant that a hearing has been granted the applicant must provide the Board of Pardons office with proof of advertisement within 90 days from the date of notice to grant a hearing. Advertisement must be published in the official journal of the parish where the offense occurred. This ad must state:

"I (applicant's name), (DOC number), have applied for clemency for my conviction of (crime). If you have any comments, contact the Board of Pardons (225) 342-5421."

B. Along with the proof of advertisement published in the local journal, the applicant may submit additional information, (e.g., letters of recommendation and copies of certificates of achievement and employment/residence agreement).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:

## **§211. Hearings before the Pardon Board**

A. The board shall meet on regularly scheduled dates as determined by it, and at such other times as the chairman may determine are necessary for the purpose of reviewing and taking action on clemency applications before it and to transact such other business as it deems necessary. The meeting calendar shall be made available to the public. The hearing dates shall also be posted on the website maintained by the board.

B. After receipt of all documents required by §203 and the clemency investigation from the appropriate probation and parole district, the board shall set the matter for public hearing.

C. At least 30 days prior to public hearing date, the board shall give written notice of the date, time, and place to the following:

1. the district attorney and sheriff of the parish in which the applicant was convicted; and, in Orleans Parish, the superintendent of police;

2. the applicant;

3. the victim who has been physically or psychologically injured by the applicant (if convicted of that offense), and the victim's spouse or next of kin, unless the injured victim's spouse or next of kin advises the board, in writing, that such notification is not desired;

4. the spouse or next of kin of a deceased victim when the offender responsible for the death is the applicant (if convicted of that offense), unless the spouse or next of kin advises the board, in writing, that such notification is not desired;

5. the Crime Victims Services Bureau of the Department of Public Safety and Corrections; and

6. any other interested person who notifies the board of pardons, in writing, giving name and return address.

D. The district attorney, injured victim, spouse, or next of kin, and any other persons who desire to do so shall be given a reasonable opportunity to attend the hearing. The district attorney or his representative, victim, victim's family, and a victim advocacy group, may appear before the board of pardons by means of telephone communication from the office of the local district attorney.

E. Only three persons in favor, to include the applicant, and three in opposition, to include the victim/victim's family member, will be allowed to speak at the hearing. Any person

making an oral presentation to the board will be allowed no more than five minutes. All persons making oral presentations in favor of an applicant shall be allowed cumulatively no more than 10 minutes. All persons making oral presentations against an applicant, including victims, shall be allowed cumulatively no more than 10 minutes. The chairman may extend the time limitations for oral presentations at his or her discretion. However, there is no limit on written correspondence in favor of and/or opposition to the applicant's request.

F. If an applicant is released from custody and/or supervision prior to public hearing date, the case will be closed without notice to the applicant. Applicant may reapply two years from the date of release.

G. Applicant's failure to attend and/or notify the board of pardons office of his/her inability to attend the hearing will result in an automatic denial. The applicant may reapply two years from the date of scheduled hearing. Lifers who fail to attend and/or advise of inability to attend may reapply in seven years if it is his/her initial hearing, five years if subsequent hearing date, and five years thereafter.

H. Four members of the board shall constitute a quorum for the transaction of business, and all actions of the board shall require the favorable vote of at least four members of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:

### **§213. Capital Cases**

A. The board will consider recommending to the governor a stay of execution of death sentence upon receipt of a written application in behalf of a condemned felon. Any such application shall contain the following information.

1. the name of the applicant, together with any other pertinent identifying information;
2. identification of the applicant's agents, if any, who are presenting the application;
3. certified copies of the indictment, judgment, verdict of the jury, and sentence in the case, including official documentation verifying the scheduled execution date;
4. a brief statement of the offense for which the prisoner has been sentenced to death;
5. a brief statement of the appellate history of the case, including its current status;
6. a brief statement of the legal issues which have been raised during the judicial progress of the case;
7. the requested length of duration of the stay, which shall be in increments of 30 days, unless a different duration is requested on the basis of the grounds for the application set forth pursuant to §213.A.8.
8. all grounds upon the basis of which the stay is requested; provided that such grounds shall not call upon the board to decide technical questions of law which are properly presented via the judicial process; and,
9. a brief statement of the effect of the offender's crime upon the family of the victim.

B. The written application must be delivered to the board office, Post Office Box 94304, Baton Rouge, LA 70804 not later than the twenty-first calendar day before the execution is scheduled. If the twenty-first calendar day before the execution is scheduled falls on a weekend or state observed holiday, the application shall be delivered not later than the next business day. The chairman may extend this timeframe

for acceptance of the written application at his or her discretion, based on good and adequate cause. Otherwise, the applicant's recourse will be directly to the governor.

C. All supplemental information, including but not limited to amendments, addenda, supplements, or exhibits, must be submitted in writing and delivered to the board office, Post Office Box 94304, Baton Rouge, LA 70804 not later than the fifteenth calendar day before the execution is scheduled. If the fifteenth calendar day before the execution is scheduled falls on a weekend or state observed holiday, all additional information including but not limited to amendments, addenda, supplements, or exhibits shall be delivered not later than the next business day. The chairman may extend this timeframe for acceptance of supplemental information at his or her discretion, based on good and adequate cause.

D. Any information filed with the application, including but not limited to amendments, addenda, supplements, or exhibits, which require reproduction facilities, equipment, or technology not operated by the board, must be provided by the applicant in an amount sufficient to allow review by all members of the board. An amount sufficient shall mean not less than ten and not more than 20 copies of the duplicate item.

E. A convicted person seeking a board recommendation to the governor of a reprieve or stay of execution may request an interview with a member of the board. Such request shall be included in the written application or any supplement filed therewith.

F. Upon receipt of a request for interview, the chairman shall designate at least one member of the board to conduct the requested interview. Such interview shall occur at the confining unit of the Department of Public Safety and Corrections. Attendance at such interviews shall be limited to the convicted person and their counsel of record, the designated board member(s), and institutional staff. The board may consider statements by the offender made at such interviews when considering the offender's application for reprieve or stay of execution.

G. The board shall consider and decide applications for stay or reprieve from execution. Upon review, a majority of the board, in written and signed form may:

1. recommend to the governor a reprieve from execution (which may include a recommendation to commute the sentence to life imprisonment);
2. not recommend a reprieve from execution; or
3. set the matter for a hearing as soon as practicable and at a location convenient to the board and the parties to appear before it.

H. When the board sets a hearing pursuant Paragraph G.3 of this Section, it shall notify the trial officials of the parish of conviction and the attorney general of the state of Louisiana and allow any such official(s), or the designated representatives thereof, the opportunity to attend the hearing and/or to present any relevant information. Prior to the hearing date, the chairman may convene a conference meeting with attorneys for the state and the convicted person to discuss and resolve any hearing preparation issues (i.e., the issues to be heard and considered by the board, list witnesses and exhibits from both sides and any other pertinent details). No testimony from witnesses will be taken. The purpose of the conference is to improve the quality of the hearing with thorough preparation.

I. At the time of notifying the trial officials, the board shall also notify any representative of the family of the victim (who has previously requested to be notified) of the receipt of the application, the setting of a hearing, and of said representative or family member's rights to provide any written comments or to attend the hearing.

J. All hearings conducted by the board under this section shall be in open session pursuant to requirements of the Louisiana Open Meetings Act. For the purpose of discussing matters which are deemed confidential by statute, or where otherwise authorized by the provisions of the Louisiana Open Meetings Act, the proceedings may be conducted in executive session closed to members of the general public, for that limited purpose. Only those persons whose privacy interests and right to confidentiality may be abridged by discussion involving disclosure of confidential information may be allowed to meet with members of the board in their executive session to discuss that information. No decision, vote, or final action by the board shall be made during a closed meeting; the board's decision, vote, or final action shall be made and announced in an open meeting. The hearing may be recessed prior to its completion and reconvened pursuant to the directions of the board.

K. Advocates for and against the death penalty, generally, and members of the general public may present written information for the board's consideration at its central office headquarters at any reasonable time.

L. After the conclusion of the hearing, the board shall render its decision, reached by majority vote, within a reasonable time, which decision shall be either to:

1. recommend to the governor a reprieve from execution (which may include a recommendation for a commutation of sentence to life imprisonment);
2. not recommend a reprieve from execution; or
3. recess the proceedings without rendering a decision on the merits, if a reprieve has been granted by the governor or if a court of competent jurisdiction has granted a stay of execution.

M. Each of the provisions of this policy are subject to waiver by the board when it finds that there exists good and adequate cause to suspend said provisions and adopt a different procedure which it finds to be better suited to the exigencies of the individual case before it.

N. Successive or repetitious reprieve applications submitted in behalf of the same condemned felon may be summarily denied by the board without meeting.

O. Time Limits. At the clemency hearing for capital punishment cases, the offender's clemency counsel and the attorneys for the state may make an oral presentation, each not to exceed 15 minutes collectively. Representatives of the victim's family may make oral statements not to exceed an additional five minutes collectively. The chairman may extend these time frames at his or her discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:

Sheryl M. Ranatza  
Chairman